Loo Mee Di v Bioray Corporation (M) Sdn Bhd & Ors

HIGH COURT (KUALA LUMPUR) — ORIGINATING SUMMONS NO D5-24-215-94
LOW HOP BING JC
5 JANUARY 1995

Companies and Corporations *— Members' rights — Rights of a member to obtain an order to compel an immediate inspection of company documents — Companies Act 1965 ss 157, 359 & 362*

Civil Procedure *— Anton Piller Order — Setting aside the order — Whether a reasonable cause of action was disclosed — Whether a strong prima facie case shown*

The first defendant Bioray Corp (M) Sdn Bhd was formed by the plaintiff and the defendants and was in effect a partnership. In a purported general meeting, new directors were appointed and the plaintiff was ousted as a director. Since then the plaintiff was denied access to the documents of the company. The plaintiff made an ex parte application for an Anton Pillar order for inspecting the company documents and was granted the order on 4 October 1994. The present hearing was an application by the defendants to set aside the order.

Held, dismissing the application to set aside the Anton Piller order:

(1) There was a cause of action under s 157 of the Companies Act 1965. Where a company had refused inspection or supply copies of the minutes, the plaintiff as a member might, on application, obtain an order to compel an immediate inspection of the register of the minute book, pursuant to ss157, 359, 362 of the Companies Act 1965.

(2) It was clear that the plaintiff was an aggrieved party. In addition, the plaintiff, who was one of the two directors of the company, was ousted as a director. The documents specified in the order were necessary to protect her interest, ie her shareholding in the company which was in effect a partnership but incorporated under the Companies Act 1965.

(3) The plaintiff had made numerous and repeated attempts to gain possession of the documents. The defendants had refused to allow the plaintiff to have sight and/or have possession of the documents. There was a real possibility that the defendants might dispose of the documents, thereby depriving the plaintiff of the opportunity to have sight of the documents before any inter partes application could be made.

A **[Bahasa Malaysia summary**

Defendan pertama, Bioray Corp (M) Sdn Bhd telah ditubuhkan oleh plaintif dan defendan-defendan dan sebenarnya merupakan satu perkongsian. Dalam mesyuarat am yang dikatakan diadakan, pengarah-pengarah baru dilantik dan plaintif disingkirkan sebagai
B pengarah. Sejak itu plaintif telah dinafikan akses kepada dokumen-dokumen syarikat. Plaintif membuat permohonan ex parte untuk perintah Anton Piller untuk memeriksa dokumen syarikat dan diberikan perintah tersebut pada 4 Oktober 1994. Perbicaraan sekarang adalah permohonan daripada defendan-defendan untuk mengetepikan perintah itu.

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Diputuskan, menolak permohonan untuk mengetepikan perintah Anton Piller:

(1) Terdapat kausa tindakan di bawah s 157 Akta Syarikat 1965. Di mana syarikat telah menolak pemeriksaan atau pembekalan
D salinan-salinan minit, plaintif sebagai ahli boleh, atas permohonan, mendapatkan perintah untuk memaksa pemeriksaan segera buku pendaftaran minit, mengikut ss 157, 359 dan 362 Akta Syarikat 1965.

(2) Adalah jelas bahawa plaintif adalah pihak yang terkilan.
E Tambahan pula, plaintif, yang merupakan salah seorang daripada dua pengarah syarikat, telah disingkirkan sebagai pengarah. Dokumen-dokumen yang ditentukan dalam perintah itu adalah perlu untuk melindungi kepentingannya, iaitu pegangan sahamnya dalam syarikat yang sebenarnya merupakan perkongsian tetapi diperbadankan di bawah Akta Syarikat 1965.

F (3) Plaintif telah membuat banyak cubaan dan berulang kali mencuba mendapatkan milikan dokumen-dokumen itu. Defendan telah enggan membenarkan plaintif untuk melihat dan/atau untuk memiliki dokumen-dokumen itu. Terdapat kemungkinan yang benar bahawa defendan mungkin
G melupuskan dokumen-dokumen itu, dengan itu melucutkan plaintif daripada peluangnya untuk melihat dokumen-dokumen itu sebelum permohonan inter partes boleh dibuat.]

Notes

H For cases on members' rights, see 3 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 188–219; [1993] *Mallal's Digest* 355–356; [1994] *Mallal's Digest* 582–586; [1995] *Mallal's Digest* 414–427.

For cases on Anton Piller order, see 2 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 244–258; [1994] *Mallal's Digest* 206–209; [1994] *Mallal's Digest* 104.

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Case referred to

Lian Keow Sdn Bhd v C Paramjothy & Anor [1982] 1 MLJ 217 (refd)

Legislation referred to

Companies Act 1965 ss 157, 359, 362

Alex Chang (*Alex Chang & Co*) for the plaintiff.

Low Kim Leng and *SC Chua* (*Soo Thien Ming & Shahrizat*) for the third defendant.

Low Hop Bing JC: On 4 October 1994 pursuant to an ex parte summons in chambers (encl 7), the plaintiff was granted an order that the defendants or any persons appearing to be in charge of the premises to permit the person who serves the order and persons authorized by the plaintiff to enter the premises or part or parts of it situated at or known as:

(1) Bioray Corp (M) Sdn Bhd Formerly Known as Bio-Ray Corp Sdn Bhd, 66, Jalan Athinahappan Satu, Taman Tun Dr Ismail, 60000 Kuala Lumpur.

(2) Chin Fan Kiong @ Chen Fan Kiong, No 10-2 Medan Setia 2, Plaza Damansara, Bukit Damansara, 50490 Kuala Lumpur.

(3) Tai Ming Kong, No 33, Jalan Bunga Raya Satu,

and any other premises disclosed to the plaintiff or his solicitors or otherwise ascertained by the plaintiff as occupied by the defendants together with any out-house, garage or other building which forms part of the same premises and any motor vehicle around or used by the defendants or persons authorized by the defendants at any time between 8 am and 8 pm for the purpose of searching for, inspecting, copying, photographing and removing into custody or control of the plaintiff's solicitors any register, book or document ('the document') of the first defendant as a company which is required by the Companies Act to be available for inspection. It was also ordered that:

(1) The defendants or any person appearing to be in charge of the said premises or vehicles do permit such search, inspection, copying and photographing to be done and on request to open, for such purposes, any cupboards, drawers, safes, containers, cases and vehicles on or upon the said premises.

(2) The defendants do disclose the identity of all premises and their addresses in the documents specified above.

(3) An affidavit to be affirmed within seven (7) days of executing the order to be obtained stating fully the facts and circumstances of what transpired and to exhibit a list of all documents and articles taken or copied.

(4) All documents or classes of documents which are in the custody of the plaintiff's solicitors.

Meanwhile the validity of the above ex parte order was extended to 18 October 1994. On 18 October 1994, the ex parte summons in chambers was scheduled to be heard inter parte to determine the

validity of the ex parte order. The plaintiff is at all material times an ex director and a shareholder of the first defendant.

In opposing the plaintiff's application, it is submitted on behalf of the defendants that the plaintiff has failed to disclose a reasonable cause of action and in failing on that score, the plaintiff should not have been granted the Anton Piller order on 4 October 1994, as the essential prerequisites have not been fulfilled and that the originating summons is to be struck out as well.

Learned counsel for the defendants also submitted that the plaintiff has failed to prove a very strong prima facie case. He relied on *Lian Keow Sdn Bhd v C Paramjothy & Anor* [1982] 1 MLJ 217 and s 34, 157, 167 and 170 of the Companies Act 1965. He contended that the plaintiff as a member has no express right which is enforceable on her own.

It is not disputed that the plaintiff is a shareholder as well was an ex director of the first defendant. There was a purported general meeting which resolved, inter alia, that some new directors were to be appointed. The plaintiff has no knowledge of the meeting nor has she consented to any such appointments. New shares were purportedly allotted to the new directors.

Upon her removal as a director, the plaintiff was denied access to the documents she was entitled to. Section 157 of the Companies Act 1965 provides for the inspection of minutes books and reads as follows:

> (1) The books containing the minutes of proceedings of any general meeting shall be kept by the company at the registered office of the company, and shall be open to the inspection of any member without charge.
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> (2) Any member shall be entitled to be furnished within fourteen days after he has made a request in writing in that behalf to the company with a copy of any minutes specified in subsection (1) at a charge not exceeding one ringgit for every hundred words thereof.

On the facts herein, there is, in my judgment a cause of action under s 157 of the Companies Act 1965. Where a company has refused inspection or supply copies of the minutes, the plaintiff as a member may, on application, obtain an order to compel an immediate inspection of the register of the minute book, pursuant to ss 157, 359, 362 of the said Act. Sections 359 and 362 of the Companies Act 1965 read as follows:

> 359. Inspection of registers
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> (1) Any register, minute book or document of a corporation which is by this Act required to be available for inspection shall subject to and in accordance with this Act be available for inspection at the place where in accordance with this Act it is kept during the hours in which the registered office of the corporation is accessible to the public.
>
> (2) Any person permitted by this Act to inspect any register, minute book or document of a corporation may make copies of or take extracts from it and any officer of the corporation who fails to allow any person so permitted to make a copy of or take extracts from the register, minute book or document as the case may be shall be guilty of an offence against this Act.

362. Court may compel compliance

(1) If any person in contravention of this Act refuses or fails to permit the inspection of any register, minute book or document, or to supply a copy of any register, minute book or document the Court may by order compel an immediate inspection of the register, minute book or document or order the copy to be supplied.

(2) If any officer or former officer of a company has failed or omitted to do any act, matter or thing which by or under this Act he is or was required or directed to do, the Court on the application of the Registrar or any member of the company or the Official Receiver or liquidator may by order require that officer or former officer to do the act, matter or thing forthwith or within such time as is allowed by the order, and for the purpose of complying with any such order a former officer shall be deemed to have the same status, powers and duties as he had at the time the act, matter or thing should have been done.

It is clear that the plaintiff is an aggrieved party. In addition, the plaintiff, who was one of the two directors of the company, was ousted as a director. The documents specified in the order are necessary to protect her interest, ie her shareholding in the company, which is in effect a partnership, but incorporated under the Companies Act 1965.

All the relevant documents had been returned to the third defendant by Syarikat Chan and the third defendant has acknowledged receipt of these documents. The third defendant was the last person or officer of the company to be in possession of the documents. The documents show that the registered address of the first defendant is that of the third defendant's residential address.

The plaintiff has made numerous and repeated attempts to gain possession of the documents. The defendants have refused to allow the plaintiff to have sight and/or have possession of the documents. There is a real possibility that the defendant may dispose off the documents, thereby depriving the plaintiff of the opportunity to have sight of the documents before any inter parte application could be made.

There is an undertaking as to damages given by the plaintiff.

On the foregoing grounds, I made an order in terms of the plaintiff's application with costs and dismiss with costs the application of the third defendant to set aside the order and the originating summons.

Order accordingly.

Reported by Richard Leung